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OFFICE OF PETITIONS

In re Application of	:	
Robert Huber	:	DECISION
Application No. 09/970,619	:	ON PETITION
Filed: 4 October 2001	:	37 CFR 1.137(b)
Attorney Docket No. 2000 P 7978 US 01	:	

This is a decision on the petition under 37 CFR 1.137(b), filed 2 May 2005, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed 6 October 2004, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on 7 January 2005.

A grantable petition under 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply, unless previously filed, which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute; in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof;
- (2) the petition fee as set forth in 37 CFR 1.17(m);
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; the Commissioner may require additional information where there is a question whether the delay was unintentional.
- (4) a terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) in a design application, a utility application filed before June 8, 1995, or a plant application filed before June 8, 1995. In addition, a terminal disclaimer and fee is also required for a utility or plant application filed on or after June 8, 1995 but before May 29, 2000, where the application became abandoned (1) during appeal, (2) during interference, or (3) while under secrecy order. The reason being that utility and plant patents issuing on applications filed on or after June 8, 1995 but before May 29, 2000, are eligible for patent term extension under former 35 U.S.C. 154(b) as a result of the Uruguay

Round Agreement. See 35 U.S.C. 154(b) (1999); see also 37 CFR 1.701. If such an application is abandoned (1) during appeal, (2) during interference, or (3) while under secrecy order, the patentee of a patent issuing from such an application is eligible for patent term extension for the entire period of the abandonment while the application is under appeal, interference, or a secrecy order will be dedicated to the public.

The instant petition lack(s) item(s) (2) above, in that the petition fee as set forth in 37 CFR 1.17(m) has not been provided. While it is acknowledged that the form PTO/SB/64 indicates that the petition fee was enclosed, no fee was provided. Additionally, no authorization has been provided to charge the customer account.

Further correspondence with respect to this matter should be addressed as follows:


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Any questions concerning this matter may be directed to Erik Kielin at (571) 272-6051 or, in his absence, to the undersigned at (703) 308-3865.


Brian Hearn
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy